

Publicly supported organization; extended advance ruling. A newly created organization, exempt from tax under section 501(c)(3) of the Code, that wishes to obtain an extended advance ruling for purposes of determining whether it will qualify as a publicly supported organization must submit a request for the extended advance ruling at the same time as its request for an initial advance ruling.

'Advice has been requested whether, under the circumstances described below, a newly created organization, exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, may receive an extended advance ruling for purposes of determining if it will qualify as a publicly supported organization under section 509(a)(2) or under section 509(a)(1), as an organization described in section 170(b)(1)(A)(vi).

'The newly created organization is exempt from Federal income tax under section 501(c)(3) of the Code. At the time the organization applied for exemption, it requested and received an advance ruling that it would be treated as a publicly supported organization and not as a private foundation during an advance ruling period, on the basis that it could reasonably be expected to be a publicly supported organization of the type described in either section 170(b)(1)(A)(vi) or 509(a)(2). At that time, the organization did not request an extended advance ruling.

'At the end of its advance ruling period, the organization submitted certain financial information in support of its claim to be a publicly supported organization. However, the information submitted failed to support the organization's claim, and it was notified by the Internal Revenue Service that it did not meet the requirements of either section 170(b)(1)(A)(vi) or 509(a)(2) of the Code, and was being classified as a private foundation.

Upon receiving this notification, the organization submitted a request for an extended advance ruling and filed Form 872-C, Consent Fixing Period of Limitation Upon Assessment of the Tax Under Section 4940 of the Internal Revenue Code of 1954, in order to have more time to satisfy the public support requirement of section 170(b)(1)(A)(vi) or 509(a)(2) of the Code.

'Section 509(a) of the Code provides that the term 'private foundation' means a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 509(a)(1), (2), (3), or (4). Organizations coming within section 509(a)(1) are those described in clauses (i) through (vi) of section 170(b)(1)(A).

'Section 170(b)(1)(A)(vi) of the Code describes an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational,

or other purpose or function constituting the basis for its exemption under section 501(a) from a governmental unit or from direct or indirect support from the general public.

'Section 509(a)(2) of the Code generally describes an organization which normally receives more than one-third of its support in each taxable year from any combination of (i) gifts, grants, contributions, or membership fees, and (ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing facilities, in an activity which is not an unrelated trade or business; and which normally receives not more than one-third of its support in each taxable year from gross investment income.

'Sections 1.170A-9(e)(5)(i) and 1.509(a)-3(d)(1) of the Income Tax Regulations provide, respectively, that a ruling or determination letter that an organization is described in section 170(b)(1)(A)(vi) or 509(a)(2) of the Code will not be issued to a newly created organization prior to the close of its first taxable year consisting of at least 8 months. However, such an organization may request an advance ruling or determination letter that it will be treated as a section 170(b)(1)(A)(vi) or 509(a)(2) organization for an advance ruling period consisting of its first 2 taxable years (or first 3 taxable years, if its first taxable year consists of less than 8 months)

'Section 1.170A-9(e)(5)(iv) and 1.509(a)-3(d)(4) of the regulations provide, respectively, that the advance ruling period shall be extended for a period of 3 taxable years after the close of the unextended advance ruling period if the organization so requests, but only if such organization's request accompanies its request for an advance ruling and is filed with a consent under section 6501(c)(4) to the effect that the period of limitation upon assessment under section 4940 for any taxable year within the extended advance ruling period shall not expire prior to 1 year after the date of the expiration of the time prescribed by law for the assessment of a deficiency for the last taxable year within the extended advance ruling period. An organization's extended advance ruling period is 5 taxable years if its first taxable year consists of at least 8 months, or is 6 taxable years if its first taxable year is less than 8 months.

'In order to receive an extended advance ruling an organization seeking such a ruling must make its request, and file a consent pursuant to section 6501(c)(4) of the Code, at the same time it requests its advance ruling. With exceptions not here relevant, neither the regulations under section 170(b)(1)(A)(vi) nor under section 509(a)(2) authorize any extension of an advance ruling unless it is requested in the manner described above.

'In this case, since the organization did not request an extended advance ruling at the time it requested its advance ruling, it may not receive an extended advance ruling for purposes of determining if it will qualify as a publicly supported

organization under section 509(a)(2) of the Code or under section 509(a)(1), as an organization described in section 170(b)(1)(A)(vi).